UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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In re:

ROBERT A. MITCHELL,

Debtor.

Chapter 7
Case No.: 16-20634 (PRW)

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ROBERT A. MITCHELL,

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

Adv. Pro. No.: 16-02021

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MOTION TO ENLARGE THE TIME FILE SETTLEMENT STIPULATION

The debtor/plaintiff, Robert A. Mitchell ("Debtor"), through his attorney, Matthew S. Mansfield, a Staff Attorney at Legal Assistance of Western New York, Inc., presents this Motion to enlarge the time to file a settlement stipulation in this adversary proceeding.

1. The Debtor filed a petition under Chapter 7 of the United States Bankruptcy Code on May 31, 2016 (the “Petition”).
2. Social Security Administration (“SSA”) received notice of the Petition through the Bankruptcy Noticing Center on June 2, 2016 (“Notice Date”).
3. One of the debts listed in the Petition was for an overpayment of social security benefits. In his schedule of assets debtor also listed potential retroactive social security benefits he may be awarded for a pending application. Debtor exempted the potential retroactive benefits in full in his schedules.
4. After the filing of the Petition and after the Notice Date, SSA setoff a total of $23,842.40 in retroactive SSD and back SSI benefits in violation of the automatic stay.

5. No objections were received to the debtor's discharge, any specific debts or to the debtor's claimed exemptions.
6. Debtor made a demand for return of the social security benefits that were taken in violation of the automatic stay but SSA did not comply.
7. Debtor filed this adversary proceeding on September 26, 2016, to recover the $23,842.40 in back social security benefits that SSA setoff without obtaining relief from the automatic stay after the Notice Date.
8. SSA filed an Answer in this action admitting that its setoffs violated the automatic stay but claiming its actions were not willful. (ECF No. 9, ¶ 1).
9. The parties participated in a pre-trial conference with the Court on January 10, 2017.
10. The parties have diligently and in good faith attempted to resolve this adversary proceeding and on or about March 21st did reach an oral settlement agreement.
11. By letter dated March 22nd, SSA's attorney notified the Court of our settlement and intention to file a settlement stipulation within 30 days.
12. Since that point in time the parties have diligently worked on the written settlement agreement and have done so in good faith.
13. However, the parties have not been able to get a final version which can be submitted to the Court within the 30 day period required by Local Bankruptcy Rule 9071-1(B).
14. This motion is being submitted, and not a stipulation, because SSA's counsel is out of the office from 4/18/17-4/24/17. I have no reason to believe SSA would object to the extension of time to file the settlement stipulation.
15. Bankruptcy Rule 9006(b) allows for an enlargement of time for cause in the Court's discretion with or without notice or motion.

16. The extra time that it has taken to get approvals for the a final written agreement stems from the fact that SSA is represented by the United States Attorney but also has counsel within the SSA that must also review and approve agreements. Furthermore, the attorney's fee award is not within the undersigned's authority to settle without review and approval of a Director at Legal Assistance of Western New York.

17. Given all parties have in good faith diligently worked to put the oral settlement agreement into a written settlement stipulation, "good cause" has been shown for the Court to extend the time with which to file a stipulation of settlement.

18. The Court has scheduled an adjourned rule 16 conference to May 9, 2017 at 10:00 a.m.

WHEREFORE, Debtor prays the Court enter an Order, substantially in the form attached hereto as **Exhibit A,** enlarging the time to file the stipulation of settlement in this adversary proceeding until May 19, 2017, pursuant to Bankruptcy Rule 9006(b) and Local Bankruptcy Rule 9071(B).

Legal Assistance of Western New York, Inc.
Attorneys for Robert A. Mitchell

Dated: April 20, 2017
Elmira, New York

/s/ Matthew S. Mansfield
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